

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF

Socora Village Company  
727 N. Waco, Suite 400  
Wichita, Kansas 67203

Respondent.

DOCKET NO. CWA-07-2004- 0215

COMPLAINT AND  
CONSENT AGREEMENT/  
FINAL ORDER

Proceedings under  
Section 309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g)

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules of Practice).

2. This Complaint and Consent Agreement/Final Order serves as notice that the Environmental Protection Agency (EPA) has reason to believe that Respondent violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and 33 U.S.C. § 1342, and regulations promulgated thereunder.

**Parties**

3. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region VII, who in turn has delegated it to the Director of the

Water, Wetlands and Pesticides Division of EPA Region VII (Complainant).

4. Respondent is Socora Village Company, a company incorporated under the laws of the state of Kansas and authorized to conduct business in the state of Kansas.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

8. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

9. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

10. 40 C.F.R. § 122.26(b)(14)(x) defines "storm water discharge associated with industrial activity", in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

11. The Kansas Department of Health and Environment (KDHE) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

12. The KDHE issued a NPDES General Permit for the discharge of storm water associated with construction activities, Permit No. S-MCSTφ-9601-1 (the Permit). The Permit

became effective on January 1, 1997, and expired on December 31, 2001. The Permit governed storm water discharges associated with large construction activity consisting of any activity (e.g. clearing, grubbing, excavating, grading, etc.) which disturbs a cumulative total of five (5.0) or more acres or that is part of a larger common plan of development or sale which will disturb a cumulative total of five or more acres.

Factual Background

13. Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362.

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Evergreen Addition located along the west side of Maize Road approximately ½ mile north of the intersection of Maize Road and 21<sup>st</sup> Street North, Sedgwick County, Kansas (the Site). Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and goes into a tributary of Cadillac Lake (Pracht Wetland) in the Lower Arkansas River Basin. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

16. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. Respondent's storm water runoff is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. The Site was a "point source" which caused the "discharge of pollutants" as defined by CWA Section 502, 33 U.S.C. § 1362.

19. Respondent discharged pollutants to a tributary of Cadillac Lake (Pracht Wetland) in the Lower Arkansas River Basin. Cadillac Lake (Pracht Wetland) is a "navigable water" as defined by CWA Section 502, 33 U.S.C. § 1362.

20. Respondent's discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12 above. KDHE assigned Respondent Permit No. S-AR94-0047, which was issued on October 27, 1998.

22. On April 8, 2003 and April 9, 2003, contractors for EPA performed inspections of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspections was to evaluate the treatment and disposal of storm water at the site in accordance with the CWA.

Findings of Violations

23. The facts stated in paragraphs 13 through 22 above are herein incorporated.

**Count I - Failure to Install Appropriate Best Management Practices**

24. Part VII, Stormwater Pollution Prevention Plan Requirements and Guidelines section of Respondent's permit states that the permittee shall ensure the Best Management Practices are properly installed and storm water runoff from disturbed areas which leaves the site boundary shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the construction site.

25. The inspection referenced in paragraph 22 above, revealed that Respondent did not ensure that the Best Management Practices were properly installed and did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site at drain inlets, lot perimeters, and entrances requiring proper and consistent stabilization practices.

26. Respondent's failure to install appropriate impediments to sediment movement is a violation of Part VII, Storm Water Pollution Prevention Plan Requirements and Guidelines section of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

27. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 34 below.

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### CONSENT AGREEMENT

28. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

29. Respondent neither admits nor denies the factual allegations or Findings of Violations contained in this Complaint and Consent Agreement/Final Order.

30. Respondent waives any right to contest the allegations and its right to appeal this Consent Agreement and the accompanying proposed Final Order.

31. Respondent and Complainant each agree to bear their own costs and attorney's fees.

32. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

33. Solely for the purpose of settling this matter and thereby avoiding the expense and uncertainties involved in a formal adjudication, Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

34. Respondent agrees to pay a mitigated civil penalty of Five Thousand and Seventy-nine Dollars (\$5079.00) within thirty (30) days of the effective dated of the Consent Agreement and Final Order.

35. The penalty payment made by Respondent pursuant to this Complaint and Consent Agreement/Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

36. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement/Final Order.

### FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Five Thousand and Seventy-nine Dollars (\$5079.00) within thirty (30) days of receipt of a copy of this fully executed Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashiers check made payable to "Treasurer, United States of America," and remitted to:

EPA - Region VII  
Attn.: Regional Hearing Clerk  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

Copies of the check shall be mailed to:

Melissa A. Coleman  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
901 North 5th Street  
Kansas City, Kansas 66101

and

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
901 North 5th Street  
Kansas City, Kansas 66101

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

3. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

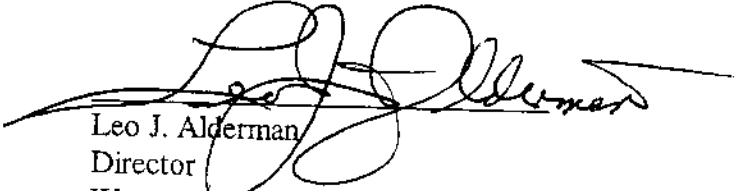
5. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

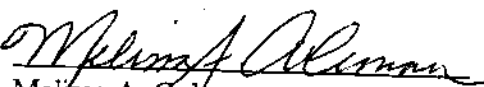
7. This executed Consent Agreement and Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

5/14/04  
Date

  
Leo J. Alderman  
Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII

5/2/04  
Date

  
Melissa A. Coleman  
Assistant Regional Counsel  
Region VII

RESPONDENT:  
Socora Village Company

5/27/04  
Date

by: Linda S. Graham  
Name: Linda S. Graham  
Title: Vice President

IT IS SO ORDERED.

June 7 2004  
Date

Robert L. Patrick  
Robert L. Patrick  
Regional Judicial Officer



IN THE MATTER OF Socora Village Company, Respondent  
Docket No. CWA-07-2004-0215

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Melissa A. Coleman  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Linda S. Graham, Vice President  
Socora Village Company  
727 N. Waco, Suite 400  
Wichita, Kansas 67203

Dated: 6/7/04

  
Kathy Robinson  
Regional Hearing Clerk